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EX PARTE

April 28, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W., TW-A325
Washington, DC 20554

RE: CC Docket No. 02-33, In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities

Dear Ms. Dortch:

On Thursday, April 24, representing Qwest Communications International Inc., Cronan O'Connell and Craig Brown met with the following representatives of the Federal Communications Commission's Media Bureau: Kyle Dixon, Barbara Esbin, Allison Greenwald, John Kiefer, Peter Corea and John Norton. The purpose of the meeting, as reflected in the attached presentation, was to discuss the need for regulatory relief in the provision of Qwest's broadband services given competitive alternatives for these services by other providers, such as cable modem service.

In accordance with FCC Rule 1.49(f), this *Ex Parte* letter and attachment is being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced docket pursuant to FCC Rule 1.1206(b)(2).

Sincerely,
/s/ Cronan O'Connell

cc:

Kyle Dixon (via e-mail at kdixon@fcc.gov with attachment)
Barbara Esbin (via e-mail at besbin@fcc.gov with attachment)
Allison Greenwald (via e-mail at agreenwa@fcc.gov with attachment)
John Kiefer (via e-mail at jkiefer@fcc.gov with attachment)
Peter Corea (via e-mail at pcorea@fcc.gov with attachment)
John Norton (via e-mail at jnorton@fcc.gov with attachment)

Attachment



Spirit of Service

**Appropriate Framework
For Broadband Access to the
Internet over Wireline Facilities
Docket 02-33
April 24, 2003**

Qwest Broadband Offerings

1. **Bundled DSL Service = DSL + ISP Service**
 - ❑ ***Retail product purchased by end users***
2. **Volume DSL Service = DSL wholesale product**
 - ❑ ***Tariffed at Interstate level and purchased by ISPs***
 - ❑ *ISPs bundle the DSL service with their Internet access and sell directly to end users under their brand name*
3. **DSL Service = DSL + access to 400 ISPs**
 - ❑ **DSL access sold and billed by Qwest to end users (CNS)**
 - ❑ **Internet access service sold and billed separately by ISP to end users**
 - ❑ *ISP purchases DSL HOST Service from Qwest once per LATA*
 - ❑ *DSL HOST Service consists of ATM switch port (BSE) and Bandwidth (BSA) elements. (Tariffed in F.C.C. No. 1, Section 8)*
4. **Raw copper loop = UNE sold to CLEC**
 - ❑ **UNE at TELRIC rates**

Four Objectives Should Guide This Proceeding

Objectives

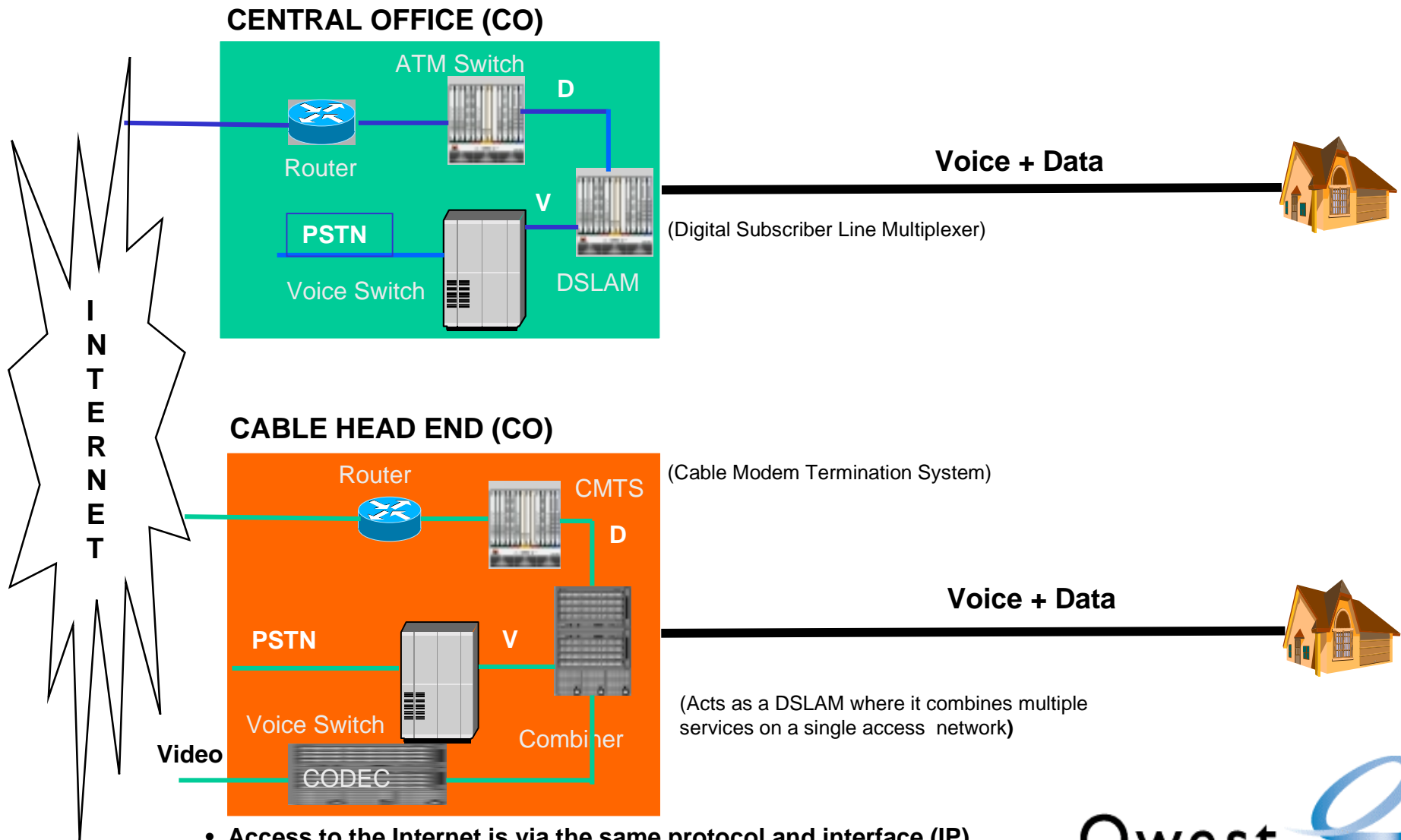
- ❑ **Treat like services alike**
 - ❑ Bundled DSL Service
 - ❑ Volume DSL Service
- ❑ **Recognize market realities**
- ❑ **Rely on section 251(c)(3) requirements to ensure CLEC access to facilities for the provision of a telecommunications service such as DSL transmission services on a common carrier basis**
- ❑ **Rely on market forces and not unnecessary regulation to ensure continued access by ISPs to DSL service**



Results

- ❑ **Title I regulatory parity with cable modem service, and elimination of CEI and ONA requirements**
- ❑ **Bundled DSL service is not the dominant service in the broadband market**
- ❑ **CLEC access to UNEs not at risk in this proceeding**
- 4. **ISP access to DSL services not at risk in this proceeding**

Cable and DSL Use the Same Physical Access Architecture



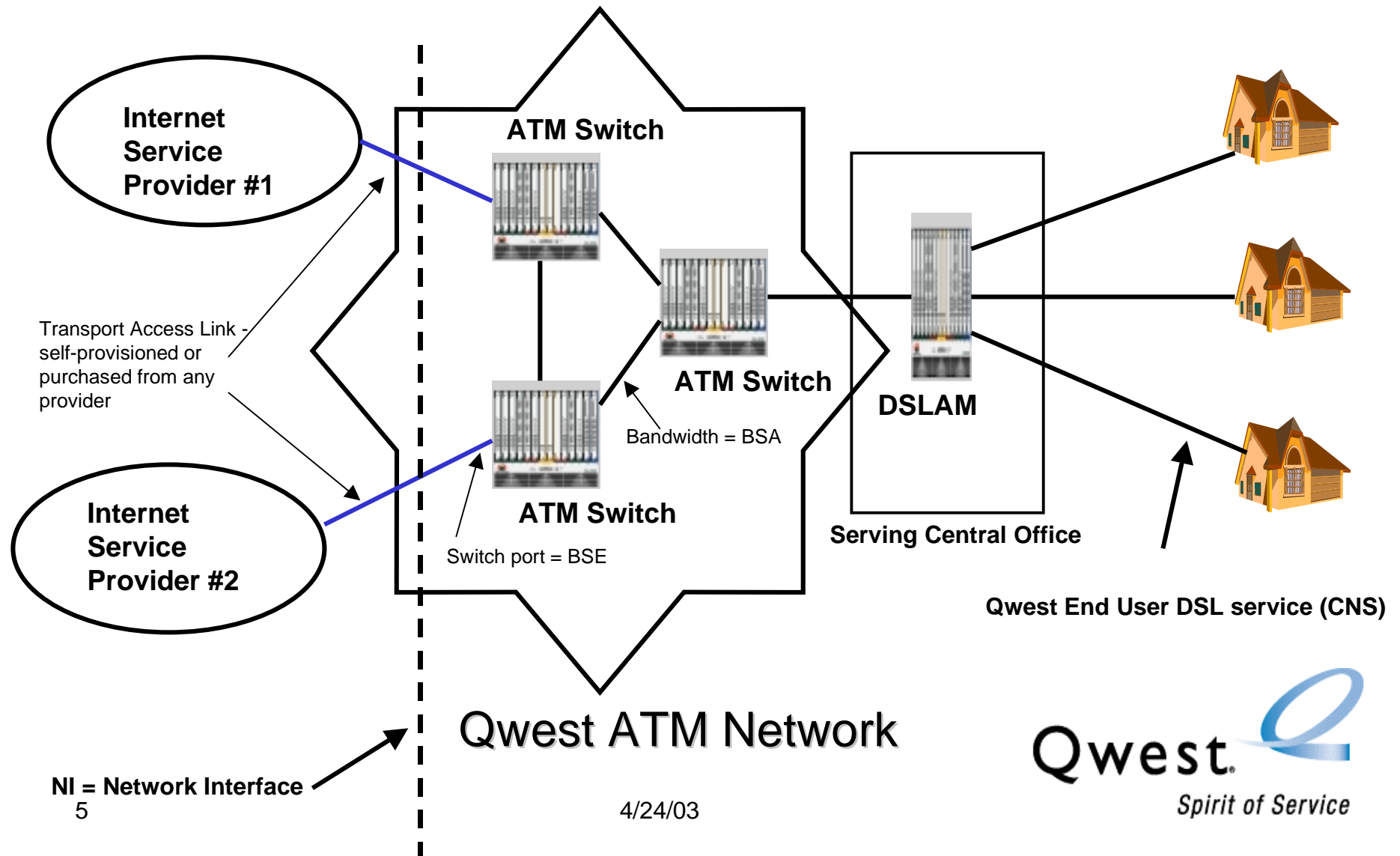
- Access to the Internet is via the same protocol and interface (IP)
- Access to the PSTN is via the same protocol and interface (Trunk)

QWEST DSL HOST SERVICE

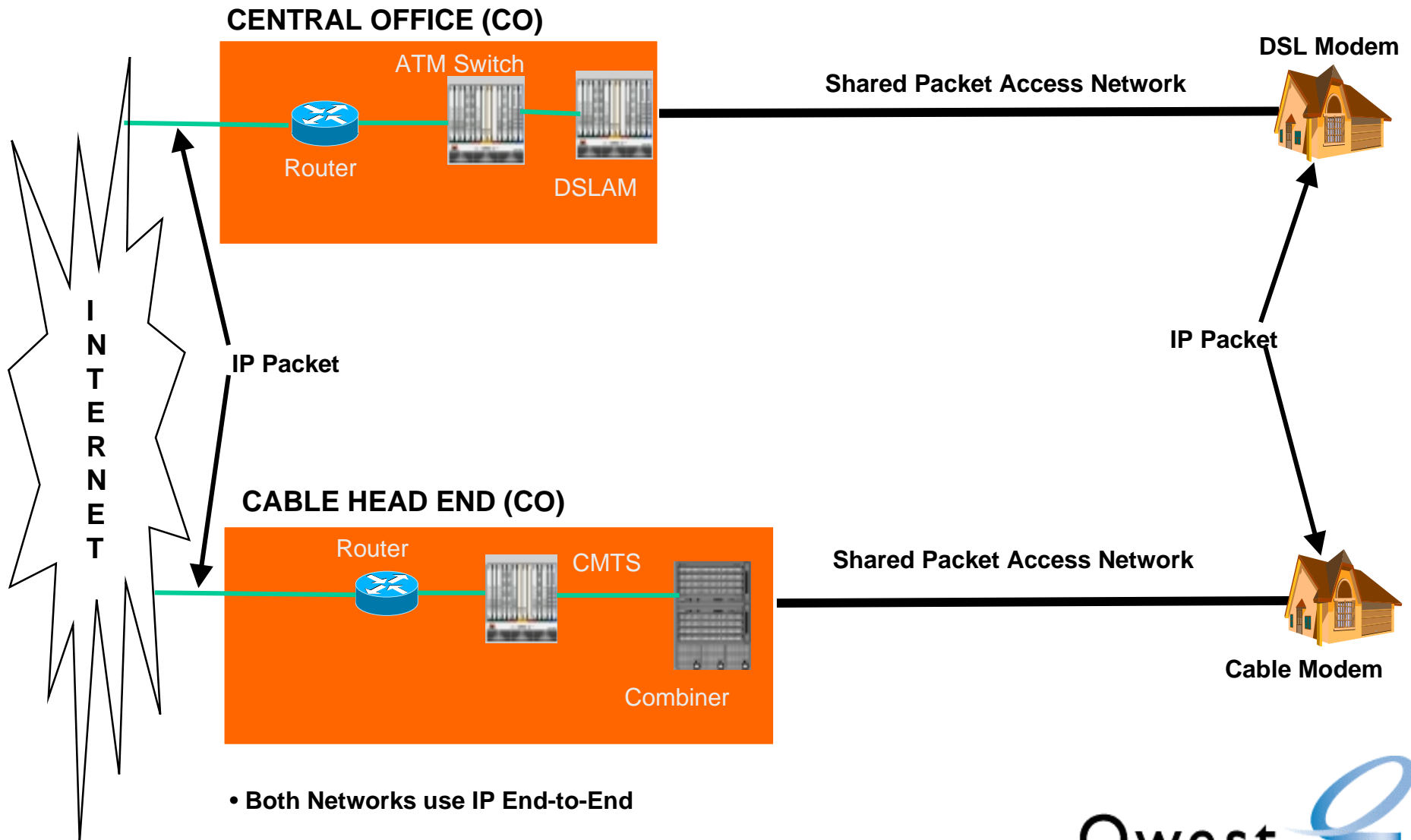
Qwest DSL HOST Service * is purchased once per LATA by an ISP

Service includes: ATM Switch Port (BSE) + Bandwidth (BSA)

** Tariffed in FCC No.1, Section 8*



Cable and DSL Use the Same IP Protocol for Data



- Both Networks use IP End-to-End
- Both Networks use a Shared Packet Access Network

DSL & Cable Modem Access are Analogous

- ❑ Functions for data access provided to the end user are the same.
- ❑ Service setup processes are functionally identical.
- ❑ DSLAM and Combiner both contain a Splitter for separation of voice and data
- ❑ All data is packetized.
- ❑ IP Addresses are assigned to the Premises in the same manner.
- ❑ Data set-up uses similar protocol to connect to the Internet (Point-to-Point Protocol and Bridging).
- ❑ The end user's computer can be used interchangeably. This means if the same ISP is connected to both the DSL and the Cable network, the user can plug their PC into either the DSL Modem or the Cable Modem and access their account.

Treat Like Services Alike

- ❑ **Bundled DSL service is an Information Service subject to Title I**
- ❑ **Bulk provision of volume DSL service to ISPs is private carriage**
- ❑ **Why:**
 - **Legally the Commission must treat like services the same**
 - **The information service only “uses telecommunications” and does not include a “telecommunications service”**
 - **ISPs seek terms and conditions tailored to their particular needs**
 - **These results are consistent with the goal of Section 706 that the FCC “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”**

Recognize Market Realities

- ❑ **The RBOCs are not dominant in the provision of Broadband Services**
 - ❑ “Cable modems continue to outsell DSL access lines, giving cable operators a sizeable lead in the market for bundled services of voice, data, and video, according to a recent report from New Paradigm Resource Group (NPRM). Over the past four years, the number of cable modem subscribers has outnumbered DSL access lines by a significant margin. While that doesn't mean DSL isn't growing fast (even faster than cable, by NPRG's reckoning), it raises the chance that cable providers will have a larger installed base from which to grow so-called "triple play" services.” *(from Light Reading.com)*
 - ❑ “Internet service has been a huge source of growth for the cable industry, which has more high-speed Internet service customers than its main rival, the telephone companies. Cable companies are expected to have 17M broadband customers by year-end, compared with 7.2M customers for DSL service...” *(Washington Post, March 26, 2003)*
- ❑ **Concerns about a broadband “duopoly” (wireline and cable) focus only on the “wired” network - need to consider Wi-Fi and Satellite technology growth in the market.**
- ❑ **Wireline broadband providers must be free to compete in this market on a level field.**

Section 251(c)(3)

- ❑ Rely on section 251(c)(3) requirements to ensure CLEC access to facilities for the provision of a telecommunications service such as DSL transmission services on a common carrier basis.
- ❑ CLEC access to the unbundled loop at TELRIC rates would still be required, subject to the terms of the Triennial Review Order, for the provision of their own telecommunications service offerings.
- ❑ Access to the unbundled loop is contingent upon FCC impairment analysis and is not implicated by an FCC determination that the “Bundled DSL Service” is an information service not subject to CEI/ONA regulations.

There is No Public Interest Harm if the CEI and ONA Rules are eliminated for RBOC DSL Services

1. **Bundled DSL Service = DSL + ISP Service**
 - ❑ Retail product sold to end users
2. **Volume DSL Service = DSL wholesale product**
 - ❑ Wholesale product sold to ISPs
 - ❑ ISPs bundle the DSL service with their Internet access and sell directly to end users under their brand name

End Users, ISPs and CLECs have multiple alternatives

3. **DSL Service = DSL + access to 400 ISPs**
 - ❑ DSL access sold and billed by Qwest to end users
 - ❑ Internet access service sold and billed separately by ISP to end users
 - ❑ *ISP purchases DSL Host Service from Qwest once per LATA*
 - ❑ *DSL Host Service consists of ATM switch port and Bandwidth elements*
 - ❑ *Tariffed in F.C.C. No. 1, Section 8*
4. **Raw copper loop = UNE sold to CLEC**
 - ❑ UNE at TELRIC rates



However, there is harm to Qwest if CEI and ONA Rules continue to apply

- ❑ Unnecessary regulations add cost to the business – and result in lost business opportunities.
- ❑ “Time to market” issues – disclosure requirements impede “just say when” business opportunities.
- ❑ Disclosure requirements foreclose Qwest’s ability to change business priorities in response to market demands.
- ❑ Disclosure of technical and product feature functionality to competitors eliminates any possibility of competitive advantage.
 - New neighborhoods
- ❑ ONA Rules at a Glance
 - 1. Equal Access Interconnection
 - 2. No preferential treatment
 - 3. Information control (CPNI)
 - 4. Advance disclosure
 - 5. No subsidization

Conclusion

- ❑ **If the Commission really wants competition in the broadband marketplace, parties must be allowed to compete.**
- ❑ **ILECs are not dominant in the provision of broadband services, and should be regulated just like Cable Modem providers in the provision of competing services.**
- ❑ **Bundled DSL service should be classified as an information service subject to Title I, and free of any ONA/CEI obligations.**
- ❑ **Bulk DSL service may be offered on a Private Carriage basis, subject to Title I.**